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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,974	01/07/2004	Emmanuelle Cecile Damay	20320	6438
23556 7590 11/29/2007 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/753,974

Applicant(s)

DAMAY ET AL.

Examiner

Melanie J. Hand

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

In view of the appeal brief filed on September 11, 2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER



Tatyana Zalukaeva.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 and 14-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Becker (U.S. Patent No. 4,657,538).

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With respect to **claim 1**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker teaches "Example 1" of a liner of the instant invention wherein on the body-facing side of the liner (i.e. the top surface) a quantity of hydrophobic microfibers located at the top surface (76% by weight of the fiber mixture) is larger than a quantity of hydrophilic microfibers (24% by weight of the fiber mixture of the wood pulp fibers) located at the top surface based on a total weight of the mixture of microfibers in the cover layer. Liner 10 comprises a removable backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. The absorbent liner 10 meets all of the remaining claim limitations of claim 1 and thus inherently and necessarily has a low profile. Becker teaches that the liner of "Example 1" has a maximum thickness of 5.3 mm, which overlaps the range disclosed by applicant serving as the quantitative definition of the term "low profile". (See Specification, Page 2, lines 32-35)

With regard to the limitation "an Absorbent Capacity in the range of about 2 grams to about 10 grams", the liner of Becker meets all of the remaining claim limitations. Absorbent capacity is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses

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all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant.

See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 2**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker teaches "Example 1" of a liner of the instant invention wherein on the body-facing side of the liner (i.e. the top surface) a quantity of hydrophobic microfibers located at the top surface (76% by weight of the fiber mixture) is larger than a quantity of hydrophilic microfibers (24% by weight of the fiber mixture of the wood pulp fibers) located at the top surface based on a total weight of the mixture of microfibers in the cover layer. Liner 10 comprises a removable backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. The absorbent liner 10 meets all of the remaining claim limitations of claim 1 and thus inherently and necessarily has a low profile. Becker teaches that the liner of "Example 1" has a maximum thickness of 5.3 mm, which overlaps the range disclosed by applicant serving as the quantitative definition of the term "low profile". (See Specification, Page 2, lines 32-35)

With regard to the limitation "an Absorbent Intake Rate of less than about 30 seconds", the liner of Becker meets all of the remaining claim limitations. Absorbent Intake rate as

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disclosed is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 3**: Becker teaches a disposable absorbent liner 10 for use in a crotch portion of underwear comprising: a cover layer in the form of outer cover 18 having a top surface and an opposite bottom surface, the cover layer 18 comprising a mixture of hydrophilic microfibers in the form of wood pulp fibers and hydrophobic microfibers in the form of polyester/polyethylene conjugate fibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface. Becker teaches "Example 1" of a liner of the instant invention wherein on the body-facing side of the liner (i.e. the top surface) a quantity of hydrophobic microfibers located at the top surface (76% by weight of the fiber mixture) is larger than a quantity of hydrophilic microfibers (24% by weight of the fiber mixture of the wood pulp fibers) located throughout the cover layer and at the top surface based on a total weight of the mixture of microfibers in the cover layer. Liner 10 comprises a removable backing layer in the form of release strip 24 and a liquid impermeable baffle layer 20 having a top surface and an opposite bottom surface, with the baffle layer 20 being disposed between the cover layer 18 and the backing layer 24. The absorbent liner 10 meets all of the remaining claim limitations of claim 1 and thus inherently and necessarily has a low profile. Becker teaches that the liner of

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"Example 1" has a maximum thickness of 5.3 mm, which overlaps the range disclosed by applicant serving as the quantitative definition of the term "low profile". (See Specification, Page 2, lines 32-35)

With regard to the limitations "an Absorbent Capacity in the range of about 2 grams to about 10 grams" and "an Absorbent Intake Rate of less than about 30 seconds", the liner of Becker meets all of the remaining claim limitations. Absorbent capacity and Absorbent Intake rate as disclosed are functions of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 4**: The top surface of the baffle layer 20 is secured to the bottom surface of the cover 18. (Col. 3, lines 24-27)

With respect to **claim 5**: The backing layer 24 is removably secured to the bottom surface of the baffle layer 20 via securement to adhesive strips 22 positioned on said baffle layer 20. (Col. 3, lines 55-57, Col. 4, 7-9)

With respect to **claim 6**: The top surface of the baffle layer is secured to the bottom surface of the cover 18 and the backing layer 24 is removably secured to the bottom surface of the baffle

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layer 20 via removable securement to adhesive strips 22. (Col. 3, lines 55-57, Col. 4, 7-9)

With respect to **claim 7**: With regard to the limitation “the Absorbent Capacity is between about 3 grams and about 9 grams”, the liner of Becker meets all of the remaining claim limitations. Absorbent capacity and Absorbent Intake rate as disclosed are functions of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 8**: With regard to the limitation “the Absorbent Capacity is between about 4 grams and about 8 grams”, the liner of Becker meets all of the remaining claim limitations. Absorbent capacity and Absorbent Intake rate as disclosed are functions of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).



With respect to **claim 9**: With regard to the limitation “an Absorbent Intake Rate of less than about 20 seconds”, the liner of Becker meets all of the remaining claim limitations. Absorbent Intake rate as disclosed is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

With respect to **claim 10**: With regard to the limitation “an Absorbent Intake Rate of less than about 10 seconds”, the liner of Becker meets all of the remaining claim limitations. Absorbent Intake rate as disclosed is a function of the absorbent materials used. When the structure or composition recited in the reference is substantially identical to that of the claimed invention, claimed properties or functions are presumed to be inherent. See MPEP §2112-2112.01. A prima facie case of either anticipation or obviousness has been established when the reference discloses all of the limitations of a claim except for a property or function and the examiner cannot determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to the applicant. See *In re Fitzgerald*, 205 USPQ 594 (CCPA 1980).

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With respect to **claim 14**: The liner 10 comprises a periphery. Becker does not explicitly teach at least one fold line defining a central area and two side areas, wherein the liner may be adjusted in size by folding the liner along the fold line, however the liner is considered herein to foldable along any fold line, given the flexible materials and thinness of the article. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the liner comprises at least one fold line that necessarily defines a central area and two side areas with a reasonable expectation of success. The limitation "wherein the liner may be adjusted in size" is considered functional language that bears little patentable weight, as the limitation describes what the at least one fold line does rather than what it is.

With respect to **claim 15**: An underwear attaching material in the form of adhesive strips 22 is provided on at least a portion of the bottom surface of the baffle layer 20. (Col. 3, lines 55-57)

With respect to **claim 16**: The cover layer 18 is a nonwoven integral matrix of the mixture of microfibers inasmuch as Becker teaches that the outer cover layer 18 is comprised of outer layers of heat fusible fibers with the wood pulp and bicomponent fibers sandwiched therebetween. (Col. 3, lines 13-15)

With respect to **claim 17**: As can be seen in Figs. 1 and 2, the flowers are formed as depressed areas. The microfibers at the top surface of the cover layer 18 are formed into elongated machine direction (MD) peaks (defined within petal boundaries of the petals extending parallel to the longitudinal direction of the article) and valleys (the petal boundaries substantially parallel to the longitudinal direction of the article), spaced apart from each other in the cross direction (CD).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 11-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker ('538).

With respect to **claim 11**: The absorbent liner 10 has a density of about 0.059 g/cc, which does not fall within the claimed range of greater than about 0.2 grams per cubic centimeter. However, Becker teaches identical materials for the hydrophilic fibers and substantially identical materials for the hydrophobic fibers. The ratio of hydrophobic fibers to hydrophilic fibers by weight of the fiber mixture determines the rate of absorbency, as evidenced by Table 1 of Becker, which shows whether liquid is permitted to pass through a flow retarding means, which is simply a web of hydrophobic material. The comparison is made between liners containing the hydrophobic web versus those that do not. Those that do have the web present have a significantly lower strikethrough probability, thus this data in Table 1 is evidence that the presence of hydrophobic material, e.g. fibers or webs, slows absorbency significantly. Thus it is interpreted herein that the amount of hydrophobic material is a result effective variable, and thus also is the density of the article, which changes as the ratio of hydrophobic fibers to hydrophilic fibers is changed. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article has the claimed density with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 12**: The absorbent liner 10 has a density of about 0.059 g/cc, which does not fall within the claimed range of greater than about 0.225 grams per cubic centimeter.

However, Becker teaches identical materials for the hydrophilic fibers and substantially identical materials for the hydrophobic fibers. The ratio of hydrophobic fibers to hydrophilic fibers by weight of the fiber mixture determines the rate of absorbency, as evidenced by Table 1 of Becker, which shows whether liquid is permitted to pass through a flow retarding means, which is simply a web of hydrophobic material. The comparison is made between liners containing the hydrophobic web versus those that do not. Those that do have the web present have a significantly lower strikethrough probability, thus this data in Table 1 is evidence that the presence of hydrophobic material, e.g. fibers or webs, slows absorbency significantly. Thus it is interpreted herein that the amount of hydrophobic material is a result effective variable, and thus also is the density of the article, which changes as the ratio of hydrophobic fibers to hydrophilic fibers is changed. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article has the claimed density with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 13**: The absorbent liner 10 has a density of about 0.059 g/cc, which does not fall within the claimed range of greater than about 0.25 grams per cubic centimeter.

However, Becker teaches identical materials for the hydrophilic fibers and substantially identical materials for the hydrophobic fibers. The ratio of hydrophobic fibers to hydrophilic fibers by weight of the fiber mixture determines the rate of absorbency, as evidenced by Table 1 of

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Becker, which shows whether liquid is permitted to pass through a flow retarding means, which is simply a web of hydrophobic material. The comparison is made between liners containing the hydrophobic web versus those that do not. Those that do have the web present have a significantly lower strikethrough probability, thus this data in Table 1 is evidence that the presence of hydrophobic material, e.g. fibers or webs, slows absorbency significantly. Thus it is interpreted herein that the amount of hydrophobic material is a result effective variable, and thus also is the density of the article, which changes as the ratio of hydrophobic fibers to hydrophilic fibers is changed. It would be obvious to one of ordinary skill in the art to modify the article of Becker such that the article has the claimed density with a reasonable expectation of success to control the rate of absorbency through the instant cover layer. Further, it has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 22**: Becker teaches that the hydrophilic microfibers comprise 24% by weight of the fiber mixture and the hydrophobic fibers comprise the remainder, i.e. 76% by weight of the fiber mixture. Thus Becker does not anticipate the claimed ranges. However since Becker teaches that the percentages are uniform throughout the outer cover layer 18 and some areas of the cover layer 18 incur a greater volume of exudates than others, it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the overall weight percentages of hydrophilic and hydrophobic fibers are maintained but vary throughout the article so as to anticipate the claimed ranges at points outside the top surface of the instant liner. It is interpreted herein that these claimed weight percentage ranges apply to everywhere in the claimed liner but the top surface of the claimed liner, as this is the only manner of claiming the weight percentages that would make the ranges consistent with claim 1 from which claim 22

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depends. If there is a design need or a market pressure to solve a problem, and there are a finite number of identified, predictable solutions, a person of ordinary skill in art has good reason to pursue known options within his or her technical grasp, and if this leads to anticipated success, it is likely product of ordinary skill and common sense, not innovation.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker ('538) in view of Fell (U.S. Patent Application Publication No. 2004/0253894).

With respect to **Claim 18**: Becker does not teach a peak-to-valley depth. Fell teaches an absorbent nonwoven material containing either hydrophilic or hydrophobic material and containing a series of machine direction peaks and valleys spaced apart from each other in the cross direction. The peak-to-valley depth of the elongated MD peaks and valleys taught by Fell is 3 mm, or between about 0.1 mm and about 0.5 mm. ('894, ¶¶0203,0204) Fell teaches that the three-dimensional material in the form of bodyside liner 12 exhibits improved intake and rewet performance characteristics, therefore it would be obvious to one of ordinary skill in the art to modify the article of Becker such that the depressed areas have a peak-to-valley depth as taught by Fell to impart improved intake and rewet performance to the outer cover layer and the article.

With respect to **Claim 19**: The peak-to-valley depth of the elongated MD peaks and valleys taught by Fell is 3 mm, or between about 0.5 mm and about 3 mm. ('894, ¶¶0203,0204) The motivation to combine the teachings of Becker and Fell is stated *supra* with respect to claim 18.

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With respect to **Claim 20**: Becker does not teach a peak-to-peak separation of the elongated MD peaks relative to the cross direction. The peak-to-peak separation of the elongated MD peaks relative to the CD in the liner material 12 taught by Fell is 2 mm, or between about 0.5 mm and about 3 mm. ('894, ¶¶0203,204) The motivation to combine the teachings of Becker and Fell is stated *supra* with respect to claim 18.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

November 27, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

